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In the Supreme Court of the United States

OCTOBER TERM, 1932

No. 567

THE UNITED STATES OF AMERICA, APPELLANT

v.

SANTOS FLORES

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinions of the District Court (R. 4–8) have not been reported.

JURISDICTION

The judgment to be reviewed was entered on November 7, 1932. (R. 8.) Appeal to this Court was allowed on December 2, 1932. (R. 9.) The jurisdiction of this Court to review by direct appeal the judgment involved is conferred by the Act of March 2, 1907, c. 2564, 34 Stat. 1246 (U. S. C., Title 18,

sec. 682) and Section 238 of the Judicial Code as amended by the Act of February 13, 1925 (U. S. C., Title 28, sec. 345). The District Court certified that its decision was founded upon its construction of a section of the United States Criminal Code. (R. 8.)

The indictment (R. 2) was filed in the District into which the accused was first brought after the commission of the offense, in accordance with Section 41 of the Judicial Code. (U. S. C., Title 28, sec. 102.)

QUESTION PRESENTED

The appellee was indicted for a murder committed on board a vessel anchored in a river within the territorial jurisdiction of a foreign sovereign. The accused and the deceased were American citizens and the vessel was of American registry, owned and operated by citizens of the United States. Was such a murder within the admiralty and maritime jurisdiction of the United States within the meaning of the Constitution and the Criminal Code?

PROVISIONS OF CONSTITUTION AND OF STATUTE INVOLVED

Article III, section 2 of the Constitution, provides:

> The judicial power shall extend * * * to all cases of admiralty and maritime jurisdiction. * * *

The Criminal Code, Act of March 4, 1909, c. 321, sec. 272, 35 Stat. 1088, 1142 (U. S. C., Title 18, sec. 451) provides:

> The crimes and offenses defined in this chapter shall be punished as herein prescribed:
>
> First. When committed upon the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State, or when committed within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State on board any vessel belonging in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States, or of any State, Territory, or District thereof. * * *

Sections 273 and 275 of the Criminal Code (U. S. C., Title 18, secs. 452, 454) define murder and fix its punishment.

STATEMENT

The appellee was indicted (R. 2) in the District Court of the United States for the Eastern District of Pennsylvania on the charge that he, an American citizen, had murdered another American citizen, by stabbing, on board an American vessel, then owned and operated by an American citizen, when that vessel was anchored in the harbor of Matadi, a port in the Belgian Congo, which was

subject to the sovereignty of the Kingdom of Belgium.

It was alleged that at the time of the murder the vessel was within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State of the United States and that the appellee was first brought into the port of Philadelphia, which is within the Eastern District of Pennsylvania.

Stipulations of counsel (R. 4) set forth more clearly the location of the boat and showed its American registry and the American citizenship of the accused and of the deceased.

The accused (R. 3) demurred to the indictment upon the ground that the crime charged did not occur within the admiralty and maritime jurisdiction of the United States.

The District Court sustained the demurrer (R. 4), basing its decision upon its construction of section 272 of the Criminal Code and holding that the crime charged in the indictment was not within the jurisdiction of the court as defined in the statute. A motion for reargument was denied (R. 7), the court holding that its decision was controlled by *United States ex rel. Maro* v. *Mathues,* 21 F. (2d) 533, affirmed in *Mathues* v. *United States ex rel. Maro,* 27 F. (2d) 518 (C. C. A. 3d). The indictment in that case charged that a crime committed in a foreign port was committed on the high seas, an inconsistency of statement not found in the pres-

ent indictment. The Government thereupon took this appeal from the order sustaining the demurrer.

SPECIFICATION OF ERRORS TO BE URGED

The District Court erred—

(1) In deciding that section 272 of the Criminal Code applies only to offenses committed on the high seas.

(2) In holding that murder committed upon a registered vessel of the United States, owned by citizens of the United States, when lying in a river within the territorial jurisdiction of a foreign sovereign, is not within the admiralty and maritime jurisdiction of the United States.

(3) In sustaining the demurrer to the indictment.

SUMMARY OF ARGUMENT

The offense charged was within the admiralty and maritime jurisdiction as that phrase is used in the Constitution and in the statutes.

The power of Congress to enact the law does not rest upon its power under Article I, section 8, clause 10, of the Constitution, "to define and punish piracies and felonies committed on the high seas, and offences against the law of nations." It rests upon another grant of power, different in its origin and broader in its scope, to regulate all matters within the admiralty and maritime jurisdiction, a power necessarily implied in Article III, section 2, clause 1.

The admiralty and maritime jurisdiction extends to criminal offenses of all grades, and Congress may define such offenses.

In the exercise of this power the statute carefully excludes from the jurisdiction of the District Courts offenses committed within the territorial jurisdiction of any State of the United States, but subject to this limitation expressly authorizes trial for named offenses, including murder, when committed (1) upon the high seas, (2) upon waters within the admiralty and maritime jurisdiction of the United States, and (3) on board any vessel belonging to any citizen of the United States if the offense is committed within the admiralty and maritime jurisdiction of the United States. The admiralty and maritime jurisdiction of the United States extends beyond its territorial waters to the high seas, and beyond the high seas to offenses committed on board American vessels in navigable waters within the territorial jurisdiction of other nations. The offense charged was within the admiralty and maritime jurisdiction of the United States, was not within the jurisdiction of any of the States, and was therefore within the jurisdiction of the court below, as defined by this statute.

Jurisdiction of one nation over offenses committed on board its vessels while lying in the ports of another nation is well recognized under the Law of Nations.

ARGUMENT

Two provisions of the Constitution are devoted to maritime affairs. Article I, sec. 8, cl. 10, empowers Congress to define and punish piracies and felonies committed on the high seas. Article III, sec. 2, provides that the judicial power shall extend to all cases of admiralty and maritime jurisdiction.

In this case we are not concerned with piracy or any felony on the high seas, and if Congress is without power to define and punish any crimes within its admiralty and maritime jurisdiction other than those referred to in clause 10 of sec. 8 of Article I the judgment of the court below was right. But if, as we contend, Congress has power under sec. 2 of Article III to define and punish all crimes within the admiralty and maritime jurisdiction of the United States, then the judgment below was wrong unless crimes committed upon American vessels within a foreign port are not within the maritime and admiralty jurisdiction of the United States.

The clause relating to felonies on the high seas had its origin in the Articles of Confederation, which, by Article IX, provided that—

> The United States in Congress assembled, shall have the sole and exclusive right and power * * * of establishing rules for deciding in all cases, what captures on land or water shall be legal, * * * appointing

> courts for the trial of piracies and felonies committed on the high seas and establishing courts for receiving and determining finally appeals in all cases of captures, * * *

Paterson's plan, presented to the Constitutional Convention on June 15, would have given to the federal judiciary jurisdiction on appeal "in all cases of captures from an enemy, in all cases of piracies and felonies on the high seas." Nothing was said as to admiralty jurisdiction. His plan was not adopted. On July 16, however, the Convention agreed nem. con. "That the National Legislature ought to possess the legislative rights vested in Congress by the Confederation." This proposal was committed to the Committee of Detail in Resolution VI on July 26. The Committee on August 6 in Article VII of their draft recommended a provision based on the Articles of Confederation which was shaped by the Convention on August 17 to read:

> to define and punish piracies and felonies committed on the high seas, counterfeiting the securities and current coin of the United States, and offenses against the law of nations.

Later, on recommendation of the Committee of Style, the provision as to counterfeiting was transferred to another clause, leaving the clause as to felonies on the high seas otherwise unchanged.

The States having retained their general admiralty and maritime jurisdiction under the Articles of Confederation it was necessary in the formation of the Constitution to provide for the grant of this jurisdiction to the United States. Accordingly in the Constitutional Convention on June 5 Wilson had said in argument that the admiralty jurisdiction ought to be given wholly to the national government. Nothing was done on the subject then. But Resolution XVI, which was committed to the Committee of Detail on July 26, provided—

> That the jurisdiction of the national judiciary shall extend to cases arising under laws passed by the general legislature; and to such other questions as involve the national peace and harmony.

Wilson was one of the five members of the Committee of Detail chosen on July 24, and when that committee reported on August 6, Article XI, sec. 3, which was devoted to the jurisdiction of federal courts, contained a provision as to cases of admiralty and maritime jurisdiction.

Thus, Sec. 2 of Article III, extending the judicial power to all cases of admiralty and maritime jurisdiction, dealt with the powers retained by the States under the Articles of Confederation over matters within the admiralty and maritime jurisdiction; and Clause 10, Sec. 8, of Article I dealt with the power granted to Congress under the Articles of Confederation to define and punish pira-

cies and felonies on the high seas and offenses against the Law of Nations. Although Article III, Sec. 2, contains no express grant of legislative power over the substantive maritime law, the provision was regarded from the beginning as implicitly investing such power in the United States. This provision of the Constitution is therefore to be read as if it contained an express grant to Congress of legislative power over all matters within the admiralty and maritime jurisdiction. *Panama R. R. Co.* v. *Johnson,* 264 U. S. 375, 386–388; *United States* v. *Bevans,* 3 Wheat. 336, 389; *Crowell* v. *Benson,* 285 U. S. 22, 39.

Considering the source and purpose of these two clauses of the Constitution, they must be regarded as complementary and as inclusive of all powers of sovereignty over maritime matters whether exercised by the Congress or by the States under the Articles of Confederation. To construe the express grant of power to define and punish piracies and felonies committed on the high seas as an exclusive definition of the power of Congress to punish offenses within the admiralty and maritime jurisdiction would at once bring the two clauses into irreconcilable conflict, with the result that a power inherent in sovereignty would be found to reside neither in the States nor in the United States.

We come, then, to the inquiry, which must be conclusive of decision in this case, and that is, whether the offense charged in the indictment was within

the maritime and admiralty jurisdiction as that jurisdiction was understood when the Constitution was framed and adopted.

As pointed out by Mr. Justice Story in *De Lovio* v. *Boit*, 2 Gall. 398, 459, 7 Fed. Cas. 418, 438—

> it is perfectly clear that the admiralty from the highest antiquity has exercised a very extensive criminal jurisdiction and punished offenses by fine and imprisonment. The celebrated inquisition at Queensborough, in the reign of Edward III, would alone be decisive.[1]

In England, from the time of Henry VIII, "treason, felonies, robberies, murders, and confederacies, committed upon the sea or in any haven, river, creek, or place where the admiral or admirals have or pretend to have power, authority or jurisdiction," were tried under Royal Commissions directed to the admiral or admirals and to three or four other substantial persons appointed by the Lord Chancellor. Proceedings in these specially constituted admiralty courts were in accordance with laws applicable in the trial of similar offenses committed upon the land. Statutes of 27 Hen. VIII, c. 4, and 28 Hen. VIII, c. 15. Holdsworth, History of English Law, 4th ed., I., 550–552; C. M. Andrews, Guide to Materials for American History in Pub. Records Office Great Britain, Vol. 2, 305, 306; Hale, Pleas of the Crown, 17; *King* v.

[1] See also the Statute of Richard II, 15 Rich. 2, c. 3; Benedict on Admiralty, 5th ed., 743, 748, 774.

Bruce, 2 Leach, Crown Cases, 353; Stephen, History of Criminal Law, II, 16–23; Brooks, Trial of Captain Kidd, 40, 57.

Thus, in England the trial of serious offenses committed within the admiral's jurisdiction came to be tried in specially constituted admiralty courts. As a matter of practice, persons designated by the Lord Chancellor to sit in these courts were usually Judges of the Common Law, but offenses committed upon the seas continued to be regarded as within the admiralty jurisdiction. The Judges sat not as Judges of Common Law Courts, but as Commissioners named in the Royal Commission, and were engaged in the trial of crimes within the admiralty and maritime jurisdiction of England. In *Bruce's Case,* (1812) 2 Leach Crown Cases 1099, Bruce was tried for murder, and the jury having rendered a verdict of guilty, the question whether the offense was committed within the admiralty jurisdiction—and therefore within the jurisdiction of Commissioners appointed under the Statute of Henry VIII—was reserved for the opinion of the twelve Judges. The Judges were unanimously of the opinion that there was no objection to the conviction on the ground of any supposed want of jurisdiction in the Commissioners. Decision turned upon the conclusion that the offense was within the admiralty jurisdiction. The statute in terms refers to such jurisdiction. 28 Hen. VIII, c. 15. The Royal Commissions were directed to the Judges of the High Court of Admiralty, and the offense charged was

laid "within the jurisdiction of the admiralty of England." 14 State Trials, 125, 130, 147. Cases were tried at the Admiralty Session in the Old Bailey. *Bruce's Case, supra.* The Sessions for the trial of such cases were known as "Sessions of Oyer and Terminer and Gaol Delivery for the Admiralty of England." Andrews, Guide, *supra,* Vol. 2, 305.

Holdsworth's statement, in his History of English Law, cited *supra,* that the effect of the Statute of Henry VIII was to transfer to the Judges of the courts of the common law the criminal jurisdiction of the admiralty, is accurate only in the sense that these Judges, sitting as Commissioners and not as Judges of the common law, were usually commissioned to conduct the trial of offenses within the admiralty and maritime jurisdiction, a jurisdiction stated in the statute, alleged in the indictment, and declared in the very title of the Court. This is the understanding of this ancient jurisdiction which prevails in the English Courts. *Queen* v. *Carr,* L. R. 10 Q. B. D. 76. *Queen* v. *Anderson,* L. R. 1 Crown Cases Reserved 161.

In the Colonies, as in England, offenses committed on the high seas or on streams within the ebb and flow of the tides were considered to be within the admiralty and maritime jurisdiction. Early in the 18th Century the practice under the Statute of Henry VIII (28 Hen. VIII, c. 15) was extended to the Colonies insofar as the prosecution of "piracies, felonies, and robberies" was con-

cerned. 11 and 12 Will. 3, c. 7; 2 Stephen, History of Criminal Law 20. So far as we have been able to discover, only petty maritime offenses were tried before the Colonial Vice-Admiralty Courts. Serious offenses, such as piracy, murder, and other felonies were tried before special Admiralty Courts in the Colonies or were sent to England for trial by Commissioners appointed under the Statute of Henry VIII.[2]

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[2] The Commissions of the Judges of the Vice-Admiralty Courts in the Colonies, no doubt following an ancient form, contain verbal grants of jurisdiction over crimes within the admiralty jurisdiction. Publications of Colonial Society of Massachusetts, Vol. II, 237, 288; Benedict on Admiralty, 5th ed., 792–811; Record Book of Maryland Court of Vice-Admiralty, in Manuscripts Division of the Library of Congress. One Joseph Hughes appears to have been tried in a special Admiralty Court at Providence, Rhode Island, for the murder of Michael Clarke. See Rhode Island: Letters from Governors in America, 1756, P. R. O.: C. O. 5: 17, p. 639. No doubt this proceeding, before a specially constituted Admiralty Court, was in accordance with the statutes of Henry VIII and William III. For instances of the trial of piracies in the Colonies see Jameson, Privateering and Piracy in the Colonial Period, pp. 143, note 2; 278, note 1; 286, note 1; 577–580. In Virginia, very shortly before the enactment of the statute of William III, a statute was passed adopting the provisions of the statute of Henry VIII. 3 Hening 176. Captain Kidd, whose arrest in Boston for murder and piracy on the high seas occurred prior to 1700, was transported to England, and there tried "in the ordinary way" in the Old Bailey before an Admiralty Court organized pursuant to Royal Commission. 14 State Trials, 123, 147, 191. For instances of petty offenses prosecuted in the Colonial Courts of Vice-Admiralty, see Hough's Cases in Vice-Admiralty and Admiralty: *King* v. *Booth* (1730), p. 12; *King* v. *Burgess* (1748), p. 56; *King* v. *White* (1754), p. 81.

Both Congress and this Court have recognized that criminal offenses, even when committed within the territorial waters of a foreign sovereignty, are within the maritime jurisdiction of the United States.

The Act of April 30, 1790, c. 9, sec. 8, 1 Stat. 112, 113, provided for the punishment of murder committed—

> upon the high seas, or in any river, haven, basin or bay, out of the jurisdiction of any particular state—

and declared that—

> the trial of crimes committed on the high seas, or in any place out of the jurisdiction of any particular state, shall be in the district where the offender is apprehended, or into which he may first be brought.

Section 12 of this act dealt with manslaughter, but only when committed upon the high seas.

In *United States* v. *Bevans,* 3 Wheat. 336, 389, which involved a murder on a warship in Boston harbor, the Court held that while Congress might pass all laws which were necessary and proper for giving effect to the exercise of the admiralty and maritime jurisdiction, which is in the government of the Union, it had not so exercised that power as to place this offense in Boston harbor within the jurisdiction of the federal court.

In *United States* v. *Wiltberger,* 5 Wheat. 76, 104, which involved manslaughter on a Chinese river thirty-five miles from the mouth, the decision

turned upon the terms of section 12 of the Act of 1790, and the Court held that Congress had not attempted to deal with cases of manslaughter on foreign rivers.

The Act of March 3, 1825, c. 65, secs. 4, 5, 4 Stat. 115, provided—

> That, if any person or persons, upon the high seas, or in any arm of the sea, or in any river, haven, creek, basin, or bay, within the admiralty and maritime jurisdiction of the United States, and out of the jurisdiction of any particular state, shall commit the crime of wilful murder, * * * every person so offending, his or her counsellors, aiders, or abettors, shall be deemed guilty of felony, and shall, upon conviction thereof, suffer death.
>
> * * * That if any offence shall be committed on board of any ship or vessel, belonging to any citizen or citizens of the United States, while lying in a port or place within the jurisdiction of any foreign state or sovereign, by any person belonging to the company of said ship, or any passenger, on any other person belonging to the company of said ship, or any other passenger, the same offence shall be cognisable and punishable by the proper circuit court of the United States, in the same way and manner, and under the same circumstances, as if said offence had been committed on board of such ship or vessel on the high seas, and without the jurisdiction of such foreign sovereign or

> state: *Provided,* always, that if such offender shall be tried for such offence, and acquitted or convicted thereof, in any competent court of such foreign state or sovereign, he shall not be subject to another trial in any court of the United States.

The bill which became this Act was introduced in the House of Representatives by Daniel Webster, the chairman of the committee, who said (Gale & Seaton's Register of Debates, vol. 1, cols. 154, 158):

> The class of crimes provided for in this section not only might happen, but had actually occurred, without the existence of any law to punish them. Murders had been committed on board our own ships while lying in the harbors of foreign nations, and, for want of such a provision, they had gone unpunished.

The Revised Statutes provided:

> SEC. 5339. Every person who commits murder * * * upon the high seas, or in any arm of the sea, or in any river, haven, creek, basin, or bay within the admiralty and maritime jurisdiction of the United States, and out of the jurisdiction of any particular State; * * * shall suffer death.
>
> SEC. 5346. Every person who, upon the high seas, or in any arm of the sea, or in any river, haven, creek, basin, or bay, within the admiralty jurisdiction of the United States, and out of the jurisdiction of any particular State, on board any vessel belonging in whole or in part to the United States, or any

> citizen thereof, with a dangerous weapon, or with intent to perpetrate any felony, commits an assault on another shall be punished by a fine of not more than three thousand dollars, and by imprisonment at hard labor not more than three years.

Section 5339 was applied in *Wynne* v. *United States,* 217 U. S. 234, in the case of a murder on an American vessel while lying in the harbor of Honolulu. Such a vessel was within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.

Section 5346 was sustained and applied in *United States* v. *Rodgers,* 150 U. S. 249, in the case of an assault upon a person upon an American vessel upon the Canadian side of the Detroit River. The Court said (pp. 264, 265):

> It is true, as there stated, that, as a general principle, the criminal laws of a nation do not operate beyond its territorial limits, and that to give any government, or its judicial tribunals, the right to punish any act or transaction as a crime, it must have occurred within those limits. We accept this doctrine as a general rule, but there are exceptions to it as fully recognized as the doctrine itself. One of those exceptions is that offences committed upon vessels belonging to citizens of the United States, within their admiralty jurisdiction, (that is, within navigable waters,) though out of the territorial limits of the United States, may be judicially consid-

ered when the vessel and parties are brought within their territorial jurisdiction. As we have before stated, a vessel is deemed part of the territory of the country to which she belongs. Upon that subject we quote the language of Mr. Webster, while Secretary of State, in his letter to Lord Ashburton of August, 1842. Speaking for the government of the United States, he stated with great clearness and force the doctrine which is now recognized by all countries. He said: "It is natural to consider the vessels of a nation as parts of its territory, though at sea, as the State retains its jurisdiction over them; and, according to the commonly received custom, this jurisdiction is preserved over the vessels even in parts of the sea subject to a foreign dominion. This is the doctrine of the law of nations, clearly laid down by writers of received authority, and entirely conformable, as it is supposed, with the practice of modern nations. If a murder be committed on board of an American vessel by one of the crew upon another or upon a passenger, or by a passenger on one of the crew or another passenger, while such vessel is lying in a port within the jurisdiction of a foreign state or sovereignty, the offence is cognizable and punishable by the proper court of the United States in the same manner as if such offence had been committed on board the vessel on the high seas. The law of England is supposed to be the same. It is true that the jurisdiction of a nation over a vessel belong-

> ing to it, while lying in the port of another, is not necessarily wholly exclusive. We do not so consider or so assert it. For any unlawful acts done by her while thus lying in port, and for all contracts entered into while there, by her master or owners, she and they must, doubtless, be answerable to the laws of the place. Nor, if her master or crew, while on board in such port, break the peace of the community by the commission of crimes, can exemption be claimed for them. But, nevertheless, the law of nations, as I have stated it, and the statutes of governments founded on that law, as I have referred to them, show that enlightened nations, in modern times, do clearly hold that the jurisdiction and laws of a nation accompany her ships not only over the high seas, but into ports and harbors, or wheresoever else they may be waterborne, for the general purpose of governing and regulating the rights, duties, and obligations of those on board thereof, and that, to the extent of the exercise of this jurisdiction, they are considered as parts of the territory of the nation herself." 6 Webster's Works, 306, 307.

A somewhat similar decision, not resting upon statute, was reached in *Queen* v. *Anderson,* L. R. 1 Crown Cases Reserved, 161, where a conviction for murder on a British ship in France, forty-five miles up the river Garonne, was sustained, Justice Blackburn saying (p. 169) that—

> the jurisdiction of the admiralty extends over vessels, not only when they are on the

> open sea, but also when in places where great ships do generally go.

See also *Queen* v. *Carr and Wilson,* 10 Q. B. D. 76.

After this Court had delivered its opinion in *United States* v. *Rodgers* and had spoken of admiralty jurisdiction as extending to navigable waters, including rivers, though out of the territorial limits of the United States, and had quoted with approval Webster's statement that a murder on an American vessel while lying in a foreign port was subject to the same jurisdiction as if it had been committed on the high seas, Congress enacted the Criminal Code (Act of March 4, 1909, c. 321, sec. 272, 35 Stat. 1088. 1142, U. S. C., Title 18, sec. 451) which provides:

> The crimes and offenses defined in this chapter shall be punished as herein prescribed:
>
> First. When committed upon the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State, or when committed within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State on board any vessel belonging in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States, or of any State, Territory, or District thereof. * * *

Later sections define murder and fix its punishment.

When these sections were under consideration the Senate members of the Special Joint Committee on the Revision of the Laws submitted a report in which they said (60th Congress, 1st Sess., Report 10, part 1, p. 10):

> That the admiralty and maritime jurisdiction of the United States extends to the high seas and all navigable waters within the territory of the United States will not be questioned. It seems equally clear that it extends to vessels belonging to the United States or to citizens thereof when on a navigable water within the limits of a foreign state, and all cases arising on board such vessel while on any such waters are clearly cases within the admiralty and maritime jurisdiction of the United States.

The statute carefully excludes from the jurisdiction of the District Courts offenses committed within the territorial jurisdiction of any State of the United States, but subject to this limitation expressly authorizes trial for named offenses, including murder, when committed (1) upon the high seas, (2) upon waters within the admiralty and maritime jurisdiction of the United States, and (3) on board any vessel belonging to any citizen of the United States if the offense is committed within the admiralty and maritime jurisdiction of the United States. The admiralty and maritime jurisdiction of the United States extends beyond its territorial waters to the high seas, and beyond the high

seas to offenses committed on board American vessels in navigable waters within the territorial jurisdiction of other nations. The offense charged was within the admiralty and maritime jurisdiction of the United States, was not within the jurisdiction of any of the States, and was therefore within the jurisdiction of the court below, as defined by this statute.

The statute is quite as broad as the sections of the Revised Statutes considered in the *Rodgers case, supra,* and in view of the history and the purpose of the law as well as the plain meaning of the phrase "admiralty and maritime jurisdiction of the United States," the application of the statute to the facts alleged at bar may not be doubted.

The exercise by Congress of its admiralty and maritime jurisdiction over offenses committed on board American vessels lying in foreign ports is in accord with the Law of Nations.

This is clear from the opinion of the Court in *United States* v. *Rodgers,* 150 U. S. 249. In *Queen* v. *Anderson,* L. R. 1 Crown Cases Reserved, 161; *Queen* v. *Carr and Wilson,* 10 Q. B. D. 76, *supra,* the courts sustained convictions for offenses committed within the territorial waters of a foreign sovereign.

Fiore's International Law Codified (translated by E. M. Borchard) declares (pp. 192, 193):

> Criminal jurisdiction over merchant vessels for offenses committed thereon must be assigned to the state which gives the vessel

> its nationality. This jurisdiction holds, even when the ship is in foreign territorial waters and ports, provided, however, that the offenses committed on board have no exterior consequences and do not affect the patrol of territorial waters or territorial public order. * * *
>
> With regard to serious offenses against "common" law which are committed on board without having any exterior consequences, the territorial state may be granted the right to intervene in order to proceed with the necessary preliminary examinations to preserve the proofs and the *corpus delicti,* reserving the surrender of the guilty person to the courts of the state to which the vessel belongs, in order that he may be tried in conformity with the law of that state.

The sixth English edition of Wheaton's International Law, I, 245, points out that the position taken in France and other continental countries, including Belgium, is that in the case of—

> Acts of mere interior discipline of the vessel, or even crimes and offenses committed by a person forming part of its officers and crew, against another person belonging to the same, where the peace of the port is not thereby disturbed * * * the rights of the Power, to which the vessel belongs, should be respected, and that the local authority should not interfere, unless its aid is demanded. These acts, therefore, remain under the police and jurisdiction of the state to which the vessel belongs.

See also Hall, International Law, 8th ed., p. 258; Moore, International Law Digest, II, p. 297.

CONCLUSION

The judgment of the District Court should be reversed.

Respectfully submitted.

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